



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,365	10/12/2001	Julie L. Patton		1361

7590 09/25/2003
Julie L. Patton
10467 N. Calle Verano Seco
Tucson, AZ 85737

EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
----------	--------------

3764

DATE MAILED: 09/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/976,365

Applicant(s)

PATTON, JULIE L.

Examiner

Fenn C Mathew

Art Unit

3764

-- The MAILING DATE of this c mmunication appears on the c ver sheet with the correspondence address --

Peri d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2001 .
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____ .

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 7-13, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Fraser (U.S. 5,577,983). Referring to claim 1, Fraser discloses a rigid segment (34), means for applying force to the rigid segment (38).
3. Referring to claim 2, Fraser discloses a coating (32) of food-grade material (PVC).
4. Referring to claim 3, Fraser discloses means including a portion of the rigid section projecting exterior to the mouth.
5. Referring to claim 4, Fraser discloses means consisting of a portion of the rigid segment projecting exterior to the mouth and an additional weight (26).
6. Referring to claim 7, Fraser discloses means consisting of an extension segment (26) that attaches to the rigid segment.
7. Referring to claim 8, Fraser discloses the extension segment supporting an additional weight (28).

Art Unit: 3764

8. Referring to claim 9, Fraser discloses the rigid segment made of a food-grade material (nylon).

9. Referring to claim 10, Fraser discloses a rigid segment (34), and a rigid projecting segment (26) projecting away from the lips of a user.

10. Referring to claim 11, Fraser discloses the rigid segment coated with a food grade material (PVC).

11. Referring to claim 12, Fraser discloses the rigid segment having sufficient weight. (As best understood by examiner, since applicant has not defined 'sufficient weight'.)

12. Referring to claim 13, Fraser discloses the rigid projecting segment supporting an additional weight (28).

13. Referring to claim 18, Fraser discloses the rigid segment consisting of a food-grade material suitable for gripping.

14. Referring to claim 19, Fraser discloses the rigid projecting segment having sufficient mass.

15. Referring to claim 20, Fraser discloses the rigid projecting segment supporting an additional weight.

16. Claims 1, 2, 10, 11, 13, and 14 rejected under 35 U.S.C. 102(b) as being anticipated by Nova, Jr. (D381,716). Referring to claims 1-2, Nava discloses a rigid segment, and means for applying force to the rigid segment.

17. Referring to claim 2, Nava inherently discloses the rigid segment coated with a food grade material (since it is held in the mouth).

18. Referring to claim 4, Nava discloses means consisting of a rigid portion projecting outside the mouth.
19. Referring to claim 5, Nava discloses weights that can be variably positioned on the rigid projecting portion.
20. Referring to claim 10, Nova discloses a rigid segment, and a rigid projecting segment from the rigid segment.
21. Referring to claim 11, Nova inherently discloses the rigid segment having a coating of food grade material.
22. Referring to claim 13, Nova discloses the projecting rigid segment supporting an additional weight.
23. Referring to claim 14, Nova discloses weights capable of being variably positioned along the rigid projecting segment.

Claim Rejections - 35 USC § 103

24. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

25. Claims 6, 8, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nova. Nova discloses the claimed invention including the feature of having weights on the extension segment. Nova lacks the specified shapes of the projecting rigid segment, however, the claimed features are seen as a matter of simple

Art Unit: 3764

design choice within the knowledge of the skilled artisan, as the applicant has failed to disclose any specific or inherent advantages to having such shapes, and it appears that the configuration of Nova would work equally well absent any unexpected or undesired results.

Conclusion

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hukuba	U.S. 5,134,743
Arias	U.S. 6,524,225
Barons	U.S. 3,118,667
Schiavoni	U.S. 5,735,772
Wright	U.S. 3,805,771
Schiavoni	U.S. D411,623

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Application/Control Number: 09/976,365

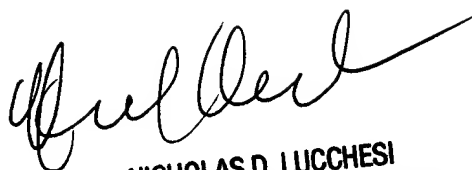
Page 6

Art Unit: 3764

fcm

fcm

September 12, 2003

A handwritten signature in black ink, appearing to read "Nicholas D. Lucchesi", written in a cursive style.

NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700